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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 046 54233 Office: CALIFORNIA SERVICE CENTER Date: DEC 13 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The Director, California Service Center, denied the preference immigrant visa petition. The petitioner subsequently appealed that decision to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on motion to reconsider. The motion will be dismissed.

The petitioner was incorporated in 1999 in the state of California and is claimed to be an affiliate of Suspension Supplies, located in Germany. The petitioner is engaged in the business of sales and distribution of automotive accessories. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. The AAO dismissed the appeal, specifically addressing the evidence submitted by the petitioner and explaining why the beneficiary did not qualify for classification as a multinational manager or executive.

On motion, counsel submits an additional statement urging the AAO to reconsider its prior decision dismissing the appeal and to approve the petition.

The regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel observes that Congress omitted the language that discussed individuals who produce a product or provide a service from the Immigration Act of 1990 and asserts that this is a clear indicator that such individuals are not precluded from qualifying as multinational managers or executives. However, the AAO will not draw this conclusion based solely on an omission. Though disputed by counsel, the precedent clearly states that an employee who primarily performs the tasks necessary to produce a product or to provide a service, rather than managerial or executive duties, is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The mere fact that a published case predates the Immigration Act of 1990 does not serve to automatically invalidate guiding case law precedent, which is entirely consistent with the relevant statute.

Despite the changes made by the Immigration Act of 1990, the statute continues to require that an individual "primarily" perform managerial or executive duties in order to qualify as a managerial or executive employee under the Act. The word "primarily" is defined as "at first," "principally," or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also "principally" or "chiefly" perform managerial or executive duties. Counsel submits no evidence in the form of congressional reports, case law, or other documentation to support his argument. Accordingly, counsel's unsupported assertions are not persuasive on this point.

Furthermore, counsel's claim that Citizenship and Immigration Services (CIS) requested evidence that is irrelevant to the instant matter is without merit. The AAO's discussion points to specific grounds for dismissing the appeal. Merely disagreeing with the AAO's sound reasoning and its use of precedent case law is not sufficient to overcome the valid objections raised by the director and the AAO in their respective decisions. While counsel cites a number of cases to support his assertions, the cases cited are unpublished and are therefore not binding in this proceeding. *See* 8 C.F.R. § 103.3(c).

Counsel repeatedly admits that the beneficiary will continue to directly participate and play a major role in the petitioner's daily operational tasks. Though counsel clearly feels that this factor should not disqualify the beneficiary from being deemed a multinational manager, he does not cite any legal precedent or applicable law that would support his interpretation of the law. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated August 29, 2003, is affirmed.